

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/196, 577	11/20/98	RITTER	B DCR400003

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QM11/0423

EXAMINER
PATTERSON, M

ART UNIT	PAPER NUMBER
3728	3

**DATE MAILED:** 04/23/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No. 09/196,977	Applicant(s) Ritter et al
Examiner Marie Patterson	Group Art Unit 3728

Responsive to communication(s) filed on \_\_\_\_\_.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

Claim(s) 1-25 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-25 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948.

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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***Specification***

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there is no basis in the specification for the channel to be made from resilient plastic as claimed in claims 10 and 25.

***Claim Rejections - 35 USC § 112***

2. Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 the phrase "the footwear having a sole..." and "attached at its respective end to the medial...the footwear", in claim 5 the phrase "attached to the footwear", in claim 6 the phrase "the footwear having a sole...", "channel through the midfoot portion of the sole of the footwear", and other phrases in claims 1-14 are confusing, vague, and indefinite because it is not clear if applicant intends to positively recite the footwear as part of the assembly or if the recitation is intended to be a recitation of intended use.

In claim 1 the phrase "the wearer's instep", "the length of said strap", in claims 3 and 4 the phrase "the horizontal", in claims 8 and 9 the phrase 'the vertical", in claims 14, 15, and 25 the phrase "the instep" lack antecedent basis rendering the claims vague and indefinite.

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In claims 11 and 20 the phrase "from the group comprising" is vague and indefinite because it is an improper Markush group because the language of a Markush group should be closed, i.e. "from the group consisting of....".

In claim 14 the phrase "second end coincident with the heel portion" is confusing, vague, and indefinite because it is not clear what structural limitations applicant intends to encompass with such language.

In claim 23 the phrase "releasably fastened" is functional, incomplete, and indefinite because it contains functional language not supported by recitation in the claim of sufficient structure to warrant the presence of such language. (MPEP 2114)

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 15, and 20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Park.

Park shows an assembly comprising a strap (13) and footwear with a sole (10) as claimed.

5. Claims 1-4, 14-18, and 20-22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by McBride.

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McBride shows an assembly comprising a strap (20b), a channel (under 14b), and an adjustable fastener (23) as claimed. The strap is considered to be angled as claimed due to being place against the angle of the wearer's foot.

6. Claims 1, 6, 11, 12, and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gibson.

Gibson shows a sandal with a strap assembly comprising a strap (10), an adjustable fastener (18), and a heel portion (14) as claimed.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-18, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over McBride in view of Gibson.

McBride shows an assembly substantially as claimed except for a heel member. Gibson teaches providing a heel member (14) for attaching a strap (10) thereto in the rear portion. It would have been obvious to provide a heel member as taught by Gibson in the sandal and strap assembly of McBride to provide more stability and control in the heel area.

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9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-18 and 20-22 above, and further in view of Scheinhaus.

McBride as modified above shows an assembly and sandal substantially as claimed except for making the channel rigid plastic. Scheinhaus teaches providing a rigid plastic member (28 and 30) in a channel for a strap. It would have been obvious to provide a rigid plastic member as taught by Scheinhaus in the sandal of McBride as modified above to allow the strap to easily slide through the channel.

10. Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over McBride in view of Thatcher.

McBride shows a sandal substantially as claimed except for a heel strap and a side member. Thatcher teaches providing a heel strap (20), heel posts (30), another strap (36) adjustably attached to the heel posts and a side member (23). It would have been obvious to provide a heel strap, posts, and side member as taught by Thatcher in the sandal of McBride to make the sandal more securely attached to the foot and more stable.

11. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ebony Smith at (703)305-3570.

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For applicant's convenience, the Group Technological Center FAX number is (703) 305-3580. Please identify Examiner \_\_\_\_ of Art Unit \_\_\_\_ at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Marie Patterson whose telephone number is (703) 308-0069.

*Marie Patterson*  
**Marie Patterson**  
**Primary Examiner**  
**Art Unit 3728**

MDP  
April 20, 1999